Decision 04-01-007 January 8, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company ("SDG&E") for Authority to Implement a Distribution Performance-Based Ratemaking Mechanism (U 904-M)	Application 98-01-014 (Filed January 6, 1998)
In the Matter of the Application of Southern California Gas Company To Adopt Performance Based Regulation ("PBR") for Base Rates to be Effective January 1, 1997 (U 902-M)	Application 95-06-002 (Filed June 1, 1995)
Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger of Pacific Enterprises and Enova Corporation with and into B Energy Sub ("Newco Pacific Sub") and G Energy Sub ("Newco Enova Sub"), the Wholly-Owned Subsidiaries of a Newly Created Holding Company, Mineral Energy Company.	Application 96-10-038 (Filed October 30, 1996)
Application of Southern California Gas Company for Authority to Update Its Gas Revenue Requirement and Base Rates. (U 904-G)	Application 02-12-027 (Filed December 20, 2002)
Application of San Diego Gas & Electric Company for Authority to Update Its Gas and Electric Revenue Requirement and Base Rates. (U 902-M)	Application 02-12-028 (Filed December 20, 2002)

DECISION GRANTING WITH MODIFICATION THE PETITION OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY FOR MODIFICATION OF DECISION 01-10-030

Summary

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) petitioned the California Public Utilities Commission (Commission) on August 26, 2003, for modification of Decision (D.) 01-10-030, adopted on October 10, 2001 in the above proceedings. In that decision, the Commission extended SDG&E's and SoCalGas' Performance Based Ratemaking (PBR) incentive mechanisms, including the performance indicators, for one year, through 2003, while changing at the same time the test year for their next cost of service applications from test year 2003 to test year 2004.

The Petition is granted with modification. In the consolidated applications (A.) filed on December 20, 2002, A.02-12-027 and 02-12-028, SoCalGas and SDG&E sought to adopt new incentive mechanisms for both companies applicable to a test year 2004. That proceeding was bifurcated by the Assigned Commissioner and Administrative Law Judge's (ALJ) ruling dated May 22, 2003 in response to SoCalGas and SDG&E when they filed a Motion for Reconsideration on April 19, 2003 of the Assigned Commissioner's April 2, 2003 Scoping Memo[1]. Extending the current PBR incentive mechanisms would prejudge the appropriate incentives, if any, that should be applicable to test year 2004. Extending the performance indicators is not the same as granting an incentive mechanism applicable to test year 2004 and is therefore permissible without prejudging the appropriateness, if any, of an incentive mechanism for 2004.

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[1] *Assigned Commissioner's Ruling Establishing Scope, Schedule and Procedures for Proceeding*, dated April 2, 2003 (Scoping Memo), and *Ruling Clarifying the Scoping Memo and Modifying the Schedule*, dated May 22, 2003.

Notice, Service and Comment

Notice of the Petition appeared in the Commission's Daily Calendar for September 5, 2003. SoCalGas and SDG&E served a copy of the petition on the service lists for A.98-01-014, 95-06-002 and the current consolidated Cost of Service Proceedings (COS) A.02-12-027 and 02-12-028. No party filed comments within the 30-days prescribed by Rule 47(f).[2]

Background

On June 1, 1995, SoCalGas filed A.95-06-002, for authorization to implement for the first time a base rate PBR program. On July 16, 1997, the Commission adopted D.97-07-054 (73 CPUC2d 469), and authorized a PBR mechanism for SoCalGas. The decision made the PBR mechanism effective on January 1, 1998[3] for 5 years, to end December 31, 2002[4]. The SoCalGas PBR decision adopted performance indicators related to SoCalGas' customer satisfaction, service quality, and employee safety, with associated financial incentives in the event the utility exceeded or failed to meet those standards.[5]

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[2] All references to Rules are to the Commission's Rules of Practice and Procedure found in Title 20 of the California Code of Regulations. All statutory references are to the Public Utilities Code unless otherwise indicated.

[3] Unless SoCalGas elected an effective date of January 1, 1997, which it did not.

[4] See 73 CPUC2d 469 at 507 and 510-511

[5] As described by the applicants in the Petition: "SoCalGas' customer satisfaction performance targets were established for: 1) customer satisfaction with the customer Service Representative, 2) customer satisfaction with the scheduling of the appointment of a field service call, 3) satisfaction with the field Appliance Service Representative, and 4) the percentage of on-time arrivals for the service call. The annual targets are based on average performance for 1994 through 1996 for each of these attributes. Performance results are gathered from responses to customer satisfaction telephone

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On January 16, 1998 SDG&E filed A.98-01-014 seeking authority to implement a Distribution PBR mechanism. Several settlement agreements were filed with the Commission, the first of which set a 1999 cost-of–service based revenue requirement that would serve as the "starting point" for future PBR rate adjustments. A settlement agreement was adopted in D.98-12-038. While A.98-01-014 was litigated, there was considerable dispute among SDG&E and other parties concerning performance indicators. However, negotiations between those parties led to the filing of a PBR performance indicator Settlement Agreement in A.98-01-014. This second all-party settlement agreement resolved among the parties the "performance indicators" (measures of safety, reliability, customer satisfaction, and call center responsiveness) that would also be a part of the overall PBR mechanism.[6] On May 18, 1999, the Commission issued D.99-05-030, and approved the settlement agreement on performance indicators.[7]

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surveys. A deadband below the target is allowed, but if SoCalGas performance falls below the deadband, <u>a penalty is assessed</u>. <u>No reward</u> is provided for performance that exceeds the target. SoCalGas' telephone response time performance standard requires 80% of all telephone calls to be answered within 60 seconds for regular calls, and requires 90 per cent of all leak and emergency calls to be answered within twenty seconds. The employee safety performance component is based upon the frequency of certain injuries and illnesses reported to the Federal Occupational Safety and Health Administration (OSHA). The employee safety benchmark is set at a frequency of 9.3 incidents per 200,000 hours worked. <u>Penalties will be paid</u> by SoCalGas if its incident rate exceeds 10.3, and <u>rewards will be paid</u> if the rate falls below 8.3." (emphasis added.)

[6] As described by the applicants in the Petition: "Employee safety is determined based on the Federal Occupational Safety and Health Administration ("OSHA") frequency standard, measuring the regulated utility's non-generation OSHA recordable lost-time and non-lost-time injuries and illnesses against total utility non-generation working hours. Customer satisfaction is determined based on the utility's year-to-date performance as reported in the Customer Service Monitoring System ("CSMS") Results.

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Discussion

SoCalGas and SDG&E plead in the petition[8] that as a result of the delay in phase II in A.02-12-027 and A.12-020-028, if there is any incentive mechanism adopted for 2004 the companies would not know the expected customer service standards of performance for much of the year and consequently any retroactive application of standards developed in a phase II decision would not be reasonable.

The April 2, 2003 Assigned Commissioner's scoping memo at page 9, and the May 22, 2003 Ruling Clarifying the Scoping Memo at page 14, make clear that the question of the appropriateness of any incentive mechanism to be applicable

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CSMS is a telephone survey of SDG&E customers having recent contact with SDG&E personnel. Call center responsiveness is determined by a base level measure in which 80% of calls will be answered within 60 seconds on a 24-hour average annual basis. This includes both personal and electronic responses to inquiries, including Customer Service Representatives and Interactive Voice Responses. Rewards or penalties for electric system reliability are determined based on the utility's performance on three separate performance indicators. These indicators are: 1) the System Average Interruption Duration Index ("SAIDI"); 2) the System Average Interruption Frequency Index ("SAIFI"); and, 3) the Momentary Average Interruption Frequency Index ("MAIFI"). SAIDI measures the average duration of electric service forced and sustained interruptions experienced by customers on an annual basis. SAIFI and MAIFI both measure the average frequency of electric distribution forced outages on an annual basis. SAIFI measures sustained outages (5 minutes or greater), while MAIFI measures momentary outages (less than 5 minutes)." (Emphasis added.)

[7] As described by the applicants in the Petition: "The remaining disputed issues, which included the design of the PBR indexing, revenue sharing, monitoring, and evaluation, were set for hearings and litigated in late 1998. On June 17, 1999, UCAN and NRDC filed an Application for Rehearing of Decision 99-05-030, alleging that the Decision's adoption of a rate-indexing mechanism would injure SDG&E's customers. The Commission addressed this rehearing request in D.99-11-029."

[8] Petition, Page 1.

to test year 2004 is a contested issue and by no means is the Commission's authorization of any mechanism certain. Litigation in Phase II has not begun, apart from the applicants' service of direct testimony and supplemental direct testimony in response to the two scoping rulings. It is now chronologically impossible for the Commission to consider authorization of any incentive mechanism before the start of test year 2004. Extension of the existing performance indicators is one solution to set objectives for SoCalGas and SDG&E management during 2004 to satisfy customer service needs. As previously adopted, utility conduct under the performance indicators could result in financial incentives, specifically rewards or penalties. It is not reasonable without a record to adopt any financial incentives for 2004 associated with the previous performance indicators at this time. Phase II may determine whether or not it is reasonable and legally permissible to adopt financial incentives for all or only a portion of test year 2004.

No party to the prior PBR proceedings or the current cost of service proceedings responded to this petition. The Commission has no certain knowledge of whether the current performance indicators are reasonable as a standard for rewarding shareholders for company performance under current conditions. Phase II could determine either that no financial incentive mechanism is currently warranted, or that the current performance indicators are inadequate or otherwise inappropriate for an incentive mechanism in 2004. Therefore any extension of the performance indicators must be seen as separate from a determination by the Commission that it will adopt any financial reward or penalty mechanism that will rely on them. It is with this condition, separating the performance indicator from any certainty of an incentive mechanism's financial reward or penalty in 2004, that the petition is granted.

SoCalGas and SDG&E proposed[9] the following underlined modifications to D.01-10-030:

> **Finding of Fact 1**: A one year deferral of the SDG&E and SoCalGas COS/PBR applications is consistent with the Commission's priorities with respect to upcoming GRCs and related proceedings for all energy utilities. (addition) <u>Because a decision on performance indicators in A.02-12-027/028 has been deferred until well into 2004, it is necessary to extend the term of SDG&E's and SoCalGas' currently-adopted performance indicators through the end of 2004</u>.
>
> **Ordering Paragraph 1**: San Diego Gas & Electric Company and Southern California Gas Company shall defer their cost of service and performance-based ratemaking applications for one year and base them on a 2004 test year. (Addition) <u>The performance indicators currently in place for SDG&E and SoCalGas shall continue in full force and effect through the end of 2004.</u>

These two changes to D.01-10-030 are adopted, as modified in Ordering Paragraph 3, to reflect the authorization as described in this decision. Granting this petition closes these proceedings.

Assignment of Proceedings

Geoffrey F. Brown is the Assigned Commissioner and Angela K. Minkin is the assigned ALJ for A.98-01-014. Susan K. Kennedy is the Assigned Commissioner for both A.95-06-002 and A.96-10-038, and Michael J. Galvin is the Assigned ALJ for A.95-06-002, and Robert A. Barnett is the Assigned ALJ for A.96-10-038.

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[9] Petition, Page 12.

Comment on Draft Decision

The ALJ Minkin's draft decision was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. SoCalGas and SDG&E filed comments on December 3, 2003, and reply comments were not filed.

In comments on the draft decision petitioners object that it would be unlawful and/or bad policy to authorize the performances indicators for 2004 without also authorizing a reward/penalty. SoCalGas and SDG&E ask rhetorically "why adopt performance indicator targets for 2004 that the utilities have no incentive to achieve?"[10] In fact that is one of the essential issues in phase II of A.02-12-027 and A.02-12-028; whether it is reasonable that SoCalGas and SDG&E should maintain current, reasonable standards of performance without an extra financial payment or penalty incentive.

We are not persuaded by petitioners' comments that the old rewards and penalties must remain in effect for 2004. Those rewards and penalties are based on old cases from the short-lived era that wrongly presumed competition would sweep away cost of service rate regulation.

SoCalGas and SDG&E argue that any reward or penalty that might be adopted in phase II in A.02-12-027 and A.02-12-028 would constitute retroactive ratemaking if a mechanism were applied to the full year 2004 performance after the start of the year. That argument is not persuasive to adopt a mechanism now when the case has not yet been made that there is a continued need for an incentive reward/penalty to compel SoCalGas and SDG&E to provide liable

[10] Page 7, December 3, 2003, *Comments of Southern California Gas Company and San Diego Gas & Electric Company on Draft Decision of ALJ Minkin*.

service. The schedule and scope for phase II follows from the proposal made by SoCalGas and SDG&E in its April 18, 2003 Motion:[11] "Second, SoCalGas and SDG&E move that the schedule adopted in the Scoping Memo be modified so as to make possible a decision on the cost-of-service elements in this proceeding by the last Commission meeting in February, 2004, with a later phase scheduled for "incentive" or "PBR" elements." The argument here that any incentive would be illegal retroactive ratemaking is inconsistent with their argument for regulatory accounts for test year 2004 revenue requirements.

Findings of Fact

1. The performance indicators as adopted in A.98-01-014 and 95-06-002 are due to expire at the end of 2003.

2. The incentive mechanisms requested by SoCalGas and SDG&E in the consolidated A.02-12-027 and 02-12-028 were bifurcated and there will not be a Commission decision before the start of test year 2004.

3. The Commission does not yet know in A.02-12-027 and 02-12-028 whether any financial incentive mechanism is reasonable for test year 2004.

4. Extending the current performance indicators into 2004 provides SoCalGas and SDG&E management objectives for meeting customer service needs.

5. Adoption of performance indicators is not the same thing as adopting an incentive mechanism.

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[11] Motion of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) for Reconsideration of Scoping Memo and for Decision Granting Interim Rate Increase or Establishing Regulatory Accounts for 2004 Revenue Requirements. (A. 02-12-027 & A. 02-12-028).

Conclusion of Law

1. Application of SoCalGas and SDG&E's performance indicators that are not adopted before the start the test year cannot be retroactively applied to the start of the test year.

2. Extension of the existing performance indicators at this time does not prejudge the need for, or reasonableness of any potential financial incentive mechanism for test year 2004.

3. Extension of the existing performance standards does not prejudge their use in any financial incentive mechanism that may be adopted for test year 2004.

4. It is not reasonable to extend the previously adopted financial incentive component of the performance indicators.

IT IS ORDERED:

1. The existing performance indicators for Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) as last adopted in Decision (D.) 01-10-030 are hereby extended to December 31, 2004.

2. The existing incentive mechanisms for SoCalGas and SDG&E, including the financial incentives associated with the performance indicators, as last adopted in Decision (D.) 01-10-030, will terminate on December 31, 2003.

3. Decision 01-10-030 is modified as follows:

> **(a) Finding of Fact 1**: A ~~one year~~ deferral of the SDG&E and SoCalGas COS/PBR applications is consistent with the Commission's priorities with respect to upcoming GRCs and related proceedings for all energy utilities. Because a decision on whether or not to adopt incentive mechanisms in A.02-12-027/028 has been deferred until after the start of test year 2004, it is reasonable to extend the term of SDG&E's and SoCalGas' currently adopted performance indicators, but not the associated financial incentives, through the end of 2004.

(b) Ordering Paragraph 1: San Diego Gas & Electric Company and Southern California Gas Company shall defer their cost of service and performance-based ratemaking applications for one year and base them on a 2004 test year. <u>The currently authorized performance indicators, but not the associated financial incentives, for SDG&E and SoCalGas shall continue through the end of 2004.</u>

4. Applications (A.) 98-01-014, A.95-06-002 and A.96-10-038 are closed.

This order is effective today.

Dated January 8, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners